

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 7554 of 2024**

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VIVEK NARENDRABHAI THAKER
Versus
STATES OF GUJARAT & ORS.

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Appearance:

MR GUNVANT R THAKAR(3801) for the Petitioner(s) No. 1

MS BHARGAVI G THAKAR(5015) for the Petitioner(s) No. 1

for the Respondent(s) No. 2,3

MR SAHIL TRIVEDI ASSISTANT GOVERNMENT PLEADER/PP for the
Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE NIKHIL S. KARIEL

Date : 09/05/2024

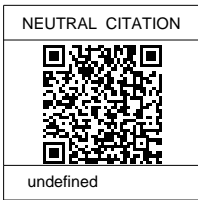
ORAL ORDER

1. Heard learned Advocate Ms. Bhargavi Thakar on behalf of the petitioner and learned Assistant Government Pleader Mr.Sahil Trivedi on behalf of the respondent – State.

2. Rule returnable forthwith. Learned Assistant Government Pleaders waive service of rule on behalf of the respondent – State.

3. By way of this petition, the petitioner has inter alia sought for being granted the benefit of being appointed on substantive / regular basis from his date of appointment and be given all benefits as accruing on the basis of such a direction.

4. Considering the submissions made by learned advocates for the respective parties, it would appear to this Court that the issue raised in the present petition is



squarely covered by the decision of this Court dated 14.03.2024 rendered in Special Civil Application No.10738/2020 and allied matters. Considering such a situation, more particularly, since the identical nature of submissions have been raised by both the sides, this Court deems it appropriate to reproduce paragraphs no.5 to 11.8 of the said decision as hereinabove:-

“5. The grievance raised by the petitioners is that the respondent-State, instead of following the policy which was prevailing on the date of demise of the employee concerned, had considered the cases on basis of Government Resolution dated 15.06.2004 which had resulted in the petitioners being appointed on ad hoc basis for a period of five years and whereas the prayers sought for being that the date of appointment of the petitioners on ad hoc basis to be treated as a substantive/regular appointment on regular pay scale and the petitioners to be given all benefits as accruing to the petitioners on basis of such a consideration.

6. At this stage, it is clarified that since the petitioners are all raising a common question of law, therefore the facts as much as are necessary and relevant for deciding the said question of law are being referred to herein below and whereas in the considered opinion of this Court elaborate examination of the facts would not be necessary.

6.1. It is the case of the petitioners that this Court has already decided number of petitions where the same grievance had been raised and whereas reference is made to decision of a learned Co-ordinate Bench of this Court dated 18.04.2022 in Special Civil Application No. 14642 of 2019, whereby the learned Co-ordinate Bench had inter alia allowed the petition by directing the respondents to issue modified orders of appointment in case of the petitioners therein and place them in regular scale of pay from the initial date of appointment and whereas arrears were to be given to the petitioners from 01.04.2020.

6.2. It is the case of the petitioners that the respondents had raised an issue of delay and latches in context of the appointment of the petitioners being of the year 2004 and thereabouts and whereas the petitioners having accepted the fixed pay appointment at the relevant point of time could not be permitted to turn around and challenge the said decision. It is the case of the petitioner that such a contention had been rejected by the learned Co-ordinate Bench, more particularly considering the decision of the State in case of one Manbarbhai Ramanbhai Naik, who had been appointed on fixed pay in the year 1994 and whereas having regard to the observations of this Court in a writ petition being Special Civil Application No. 1579 of 2002 decided on 07.10.2002, the Government had passed the above stated order whereby appointment was issued to the said Mr. Naik on regular basis



from the date of initial appointment.

6.3. *It is the case of the petitioners that the decision of the learned Coordinate Bench dated 18.04.2022 had been challenged by the State by preferring Letters Patent Appeal No. 855 of 2022 and allied matters including Letters Patent Appeal No. 1050 of 2022 and whereas Division Bench of this Court vide decision dated 05.09.2022 had rejected the Letters Patent Appeals, more particularly relying upon decision of the Hon'ble Apex Court in case of State of Madhya Pradesh and Others Vs. Ashish Avasthi, reported in (2022) 2 SCC 157.*

7. *It is submitted by learned Advocates for the petitioners that the said decision dated 18.04.2022 had been challenged before the Hon'ble Apex Court insofar as the Letters Patent Appeal No. 1050 of 2022 is concerned and whereas vide order dated 24.5.2023 in SLP (Civil) Diary No.1024 of 2023, the Hon'ble Apex Court had permitted the petitioners therein to withdraw the said SLP. Learned Advocates for the petitioners would submit that the issue having attained finality upon the SLP being withdrawn, and therefore, this Court may follow the law laid by the learned Co-ordinate Bench as confirmed by the Division Bench of this Court, as confirmed by the Hon'ble Apex Court.*

8. *These petitions are vehemently opposed by learned AGP Ms. Nirali Sarda for the respondent State. Learned AGP Ms.Sarda would submit that as such, SLPs have been preferred against the very selfsame decision dated 05.09.2022 and whereas under such circumstances, it cannot be stated that the issue has attained finality.*

9. *Learned AGP would further contend that the principal issue, which is required to be addressed here is the delay, which has occurred in preferring the present group of writ petitions. Learned AGP would submit that while the petitioners have been appointed around the year 2004-05, yet for the first time after substantial delay, the present petitions have been filed inter alia claiming that the petitioners would be entitled for grant of benefits of regular appointment from the date of their appointment. Learned AGP would rely upon the decision of the Hon'ble Supreme Court in case of Bichitrananda Behera Vs. State of Orissa and Ors., in SLP(C) No.16238 of 2017 as well as in case of Union of India and Others Vs N. Murugesan and Ors., reported in (2022) 2 SCC 25 in support of his submission. Learned AGP, relying upon the above decisions would submit that the petitioners having acquiesced to the position i.e. acquiesced to their appointment on fixed term basis are now, after such a substantial delay, are not entitled to seek for the benefits of regular appointment, relating back to the date of their original appointment. Learned AGP would further submit that this Court may also consider a further crucial issue i.e. the aspect of the policy, which was prevalent on the date when the applications of the petitioners were considered. It is the case of learned AGP that while at the time of demise of the original employees what was in existence was a policy of the State Government vide Government Resolution dated 10.3.2000 and*



whereas at the time when the applications were considered, the State had come out with a Resolution dated 15.6.2004, whereby employees were to be appointed on fixed term basis on fixed salary basis. Learned AGP would submit that since the latter policy was in existence at the time when the applications of the petitioners were considered by the respondents, therefore, the respondents were well justified in granting the appointment to the petitioners on fixed term basis, later on regular basis. Thus submitting, learned AGP would request this Court not to entertain the present petitions and not to grant any relief to the petitioners whatsoever.

10. As against the said submissions, learned Advocates for the petitioners would rely upon the decisions of Hon'ble Division Bench of this Court in LPA No.855 of 2022, whereby the Hon'ble Division Bench had confirmed the decision of a learned Coordinate Bench in SCA No.14642 of 2019 and whereas the decision of the Hon'ble Division Bench had also not been interfered with by Hon'ble Apex Court, more particularly vide decision dated 24.5.2023 in SLP (C) Diary No.1024 of 2023, the Hon'ble Apex Court had permitted the petitioner – District Development Officer to withdraw the SLP. Learned Advocates for the petitioners would also draw the attention of this Court to a decision of Hon'ble Division Bench in LPA No.464 of 2023, whereby the decision of a learned Coordinate Bench in SCA No.10916 of 2020 dated 19.9.2022, in a similar set of matters, had been confirmed. Learned Advocates would also point out that the decision of the Hon'ble Division Bench had been confirmed by the Hon'ble Supreme Court, more particularly vide decision dated 28.11.2023, dismissing the SLP. Learned Advocate would submit that in SCA No.18785 of 2017 and allied matters, a learned Coordinate Bench of this Court vide decision dated 2.9.2023 had rejected the request of similarly situated petitioners for grant of regular appointment from their date of original appointment. Learned Coordinate Bench had inter alia considered that the petitions were grossly delayed and whereas the learned Coordinate Bench had also observed that the issue being within the realm of the policy decision of the State, the same was not interfered with. It is submitted by the learned Advocate for the petitioners that Hon'ble Division Bench of this Court in LPA No.287 of 2023 and LPA No.289 of 2023, whereby a decision of learned Coordinate Bench in SCA Nos.18785 and 18788 of 2023 had been challenged, had inter alia set aside the decision of the learned Coordinate Bench and had declared the original petitioners entitled for grant of regular appointment in regular pay scale from the date of their initial appointment. Learned Advocate for the petitioners would submit that since the decisions of the learned Coordinate Benches were in favour of the petitioners, had been taken in similar set of petitions, the same had been upheld by the Hon'ble Division Bench and the same had been confirmed by the Hon'ble Supreme Court by not interfering with the decision of the Hon'ble Division Bench and whereas on the other hand, where the learned Coordinate Benche had taken a view against the petitioners where similar issues had been raised, the said decision had been interfered with by the Hon'ble Division Bench. Learned Advocate would submit that under such circumstances, the issue being covered by earlier decisions, this Court may direct the



State to accord similar treatment to the present petitioners, who are identically situated to the original petitioners of SCA No.6140 of 2020 and allied matters, which came to be allowed and whereas the said decision came to be confirmed by the decision of Hon'ble Division Bench in LPA No.1043 of 2022, which decision was not interfered with by the Hon'ble Supreme Court in SLP(C) Diary No.124 of 2023 and similarly situated to the petitioners of SCA No.10916 of 2020, which came to be allowed by learned Coordinate Bench, which decision had been confirmed by Hon'ble Division Bench in LPA No.464 of 2023 and the said decision had not been interfered with by Hon'ble Supreme Court in SLP (C) Diary No.30685 of 2023. Thus submitting, learned Advocate for the petitioners would request this Court to allow the present group of writ petitions.

11. Heard learned Advocates for the respective parties and perused the documents on record.

11.1. Considering the submissions, while it would appear that on substantive aspect, learned Coordinate Bench and Hon'ble Division Bench have passed orders in favour of the petitioners, yet it would appear that the State is seeking to contest the petitions before this Court mainly on two grounds i.e. on the ground of delay and on the ground that at the time when the applications for grant of compassionate appointment preferred by the present petitioners had been considered, a different policy of the State was in existence and, therefore, the State was well justified in coming to a conclusion of appointing the petitioners on fixed term basis.

*11.2. In the considered opinion of this Court, the issue is no more open for the respondent State to take up, more particularly in view of the decision of the learned Coordinate Bench in **Sachin Ishwarlal Chavda dated 18.4.2022** expressly rejecting the contention of delay raised by the respondents and whereas it appears that the said decision had been confirmed by the Hon'ble Division Bench of this Court and whereas Hon'ble Supreme Court had also declined to interfere in a petition, whereby the decision of the Hon'ble Division Bench had been challenged. Paragraphs 10, 11, 12, and 13 of the decision dated 18.4.2022, more particularly whereby the learned Coordinate Bench had rejected the contention of the respondent State that all the petitions being grossly delayed, being relevant for the present purpose are reproduced herein below for benefit :-*

“10. Considering the submissions made by the learned advocates for the respective parties, it appears that Mr. Manharbhai Ramanbhai Naik, who was denied appointment on compassionate ground as a result of the ceiling of income limit prevalent at the time of his application, approached this Court when his case for appointment was rejected. Considering the policy as per the GR dated 10.3.2000 and 7.9.2002, the Court set aside the stand of the State Government in not considering the case of the petitioner for appointment on compassionate ground. The relevant portion of the order dated 7.10.2002 passed in Special Civil Application No.1579 of 2002



reads as under:

“4. At the hearing of the petition, the learned counsel for the petitioner relies on the Government Resolution dated 7-9- 2002 laying down that the Government Resolution dated 10- 3-2000 doing away with the income limit in matters of compassionate appointment shall be given effect from 1-1- 1996.

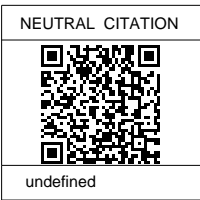
5. In view of the aforesaid resolution, it is clear that in cases where deceased expired on or after 1-1-1996, the compassionate appointment cannot be refused on the ground of the income of the families exceeding the prescribed limit as no limit would now be applicable.

6. In view of the statement being made by the learned counsel for the petitioner that the death of the father of the petitioner took place while holding office and on or after 1-1-1996 i.e. on 19-6-1999, it is obvious that the present case will be governed by the Government Resolution dated 10-3-2000 read with the Government Resolution dated 7-9-2002.”

11. Based on these directions, Mr. Manbarbhai Ramanbhai Naik was appointed on compassionate ground by an order dated 23.7.1994 on fixed pay of Rs.2,500/-. That his appointment was on fixed pay similar to the one in case of the petitioners is evident from the modified order issued by the State on 12.6.2019. Reading the order of 12.6.2019 would indicate that the State Government considering the spirit of the order passed in Special Civil Application No.1579 of 2002 dated 7.10.2002 modified the order appointing that petitioner in fixed pay of Rs.2,500/- and backing his appointment as one in the regular scale of pay from his initial date of appointment and not after completion of five years.

12. The facts on hand in the present cases would indicate that the case of the petitioners is similar to that of the petitioner of Special Civil Application No.1579 of 2002. The petitioners in the cases as argued by Ms. Thakar who were appointed on 25.7.2004 and 19.4.2005 and in the case of Ms. Harshal Pandya, the petitioner so far as SCA No.14953 of 2020 was appointed on 12.8.2004. Perusal of all these orders would indicate that the petitioners were appointed on compassionate ground on fixed pay of Rs.2,500/- as that of the petitioner of SCA No.1579 of 2002. It was on 12.7.2019 that petitioner Mr. Manbarbhai Ramanbhai Naik for the benefit of being appointed on regular pay scale from his initial date of appointment and not on completion of five years and the order was so modified. It is based on these orders that the petitioners are promoted to approach this Court in the year 2019-2020 claiming similar benefits.

13. The objection of delay on the part of the respondents therefore that having



accepted that appointments in 2004, the petitions are delayed, is an objection which is misconceived.”

11.3. The decision of the learned Coordinate Bench had been affirmed by the Hon'ble Division Bench vide decision dated 5.9.2022 in LPA No.855 of 2022 and allied cases. A perusal of the said decision reveals that challenge to the judgement of the learned Single Judge was on the ground of the original petitioners having approached the Court after a substantial delay which, aspect according to the appellants, had not been appreciated by the learned Coordinate Bench. The Hon'ble Division Bench having not countenanced the submissions of the appellant had rejected the LPA. Paragraphs No.3, 4, 5 and 11 of the said decision being relevant for the present purpose are reproduced herein below for benefit :-

“3. The only ground raised and emphasis put on by the appellant is delay and laches on the part of the respondent employee seeking similar reliefs, and that too, by relying upon the order dated 12.06.2019 passed by the Panchayat Department, State of Gujarat in connection with similarly situated employee, namely, Manbarkumar Ramanlal Nayak.

4. The facts arise from the record are that the respondent employee herein, who are the original petitioners namely (1) Sachin Ishwarlal Chavda in Special Civil Application No. 14642 of 2019, who had been given order of appointment on 25.07.2004 giving effect of appointment from 16.10.2004, (2) Prakashkumar Purshottamdas Mevada in Special Civil Application No. 14646 of 2019, who had been given order of appointment on 25.07.2004 giving effect of appointment from 15.10.2004, (3) Sanjaykumar Laxmanbhai Kalotara in Special Civil Application No. 14873 of 2019, who had been given order of appointment on 25.07.2004 giving effect of appointment from 14.10.2004, (4) Dineshkumar Gokaldas Parekh in Special Civil Application No. 14899 of 2019, who had been given order of appointment on 25.07.2004 giving effect of appointment from 01.11.2004, (5) Vijaykumar Kantibhai Patel in Special Civil Application No. 6138 of 2020, who had been given order of appointment on 18.08.2004 giving effect of appointment from 16.11.2004, (6) Harjindersinh Ramsinh Rathod in Special Civil Application No. 6139 of 2020, who had been given order of appointment on 11.11.2005 giving effect of appointment from 05.12.2005, (7) Bharatbhai Natvarbhai Darji in Special Civil Application No. 6142 of 2020, who had been given order of appointment on 15.02.2005 giving effect of appointment from 09.05.2005 and (8) Ajitsinh Badesinh Solanki in Special Civil Application No. 6140 of 2020, who had been given order of appointment on 19.04.2005 giving effect of appointment from 24.05.2005 were appointed on fixed pay. However, considering the policy applicable to the service conditions on compassionate grounds, the original petitioners requested that they should have been appointed on regular pay scale from the date of their initial



appointment.

5. Since the case of the petitioners was not considered for regular pay scale from the date of their initial appointments and the case of another employee, namely, Manbarkumar Ramanlal Nayak was considered giving effect of regular pay scale from the date of his initial appointment, writ petitions were filed in the year 2019 by the respondent employees herein.

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11. As far as delay is concerned, it is true that the petitioners have approached after a long period; however, if the order dated 12.06.2019 passed by the concerned authority is perused, the said Manbarkumar Ramanlal Nayak, who was appointed on compassionate ground on 23.07.2003 and was given all the benefits subsequent to petition filed by him before this Court in the year 2017, and thus, the State Government itself has condoned the delay with regard to claim put forward by said Manbarkumar Ramanlal Nayak, and therefore, all the respondents employee in the appeals herein are also required to be given similar treatment. Learned Single Judge has also kept in mind for filing the petition at belated stage and has observed accordingly. Learned Single Judge has not granted any arrears from their initial date of appointment and has granted the benefits from 01.01.2010, and therefore, no interference is required in the order passed by learned Single Judge. Hence, present appeals stand dismissed.”

11.4. In the considered opinion of this Court, it would appear that the present petitioners being identically situated to the petitioners in case of Special Civil Application No.14642 of 2019 and allied matters, the observations of the Hon’ble Division Bench would apply with all force in the facts of the present petitions also.

11.5. Insofar as the submissions on behalf of the respondent State that a different policy being in existence on the date when the applications were considered, also does not require any consideration, more particularly since in LPA No.287 of 2023 vide decision dated 3.10.2023, the Hon’ble Division Bench had dealt with the said controversy and whereas in view of the observations of the Hon’ble Division Bench being binding on this Court, the submissions by the State on the said count would not merit any consideration. Paragraphs 4.2, 5, 5.1, 5.2 and 5.3 of the decision dated 3.10.2023 are quoted herein below for benefit :-

“4.2 On the other hand, learned advocate for the respondent would submit that on the basis of the decision of the Supreme Court in Ashish Awasthi (supra) in which it is held that for the appointment on compassionate ground, policy prevalent at the time of death of the deceased employee only to be



considered and not the subsequent policy.

5. On a closer look of the facts and attendant aspects in this case, the controversy could be answered irrespective of whether the policy at the time of application or the policy prevalent at the time of considering the application, would apply. There is no need to weigh the said principles. There is no gainsaying that when the petitioners became eligible and they applied for compassionate appointment, the specific scheme or compassionate appointment was as per the Resolution dated 10.3.2000. The Resolution dated 15.6.2004 and other Resolutions reflected only general policy, whereby the government authorities used to offer fixed term appointment on fixed salary basis. Somehow in case of the petitioners the said policy was applied and the appointments to the petitioners were given of such kind and nature, treating them as compassionate appointment.

5.1 The policy reflected in Resolution dated 10.03.2000, in terms provided that the eligible kith and kin of the deceased employee would be provided appointment on compassionate ground. This appointment was contemplated to be substantive appointment and not a temporary one. It was a benefit to be conferred on permanent basis.

5.2 Learned Single judge misdirected himself himself in making calling observations regarding the scheme of Resolution dated 10.03.2000, reproducing paragraph 15,

"The claim of the petitioners is for appointment as per the prevailing policy under Government Resolution dated 10-3- 2000. A perusal of the aforesaid Government Resolution indicates that it was for the purpose of providing benefit to the dependents of employees of Class-3 and Class-4 cadre upon his expiry while in service and amendment made therein. However, the entire Government Resolution does not mention anything with regards to making the appointment on a regular post on a regular pay scale and therefore in absence of any specific provision under the Resolution for making appointment against a pay scale, the Court will not presume such fact to be a policy of the State Government."

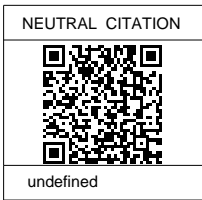
5.3 Appointing on compassionate basis is always pursuant to a particular specific policy. That policy in the case of the petitioners was one reflected in Resolution dated 10.3.2000. Furthermore, when a person is appointed on compassionate basis, the appointment is against specific post. A compassionate appointment in that way is substantive appointment under the four corners of the policy. The petitioners' case was required to be governed accordingly."



11.6. A perusal of the above paragraphs would clearly indicate that the Hon'ble Division Bench was of the considered opinion that the issue could be answered irrespective of the fact of the policy prevalent at the time of the death of the deceased employees, or the policy prevalent at the time of the applications being considered, being the relevant policy, being the contention of the State. It would appear that the Hon'ble Division Bench was of the clear opinion that the petitioners were entitled to compassionate appointment based upon the Resolution dated 10.3.2000 and whereas insofar as the later Resolution dated 15.6.2004 was concerned, the same was a general policy of the State and whereas it was held that while the appointment of the petitioners on fixed term for fixed salary may have been as per the policy dated 15.6.2004, but their appointment on compassionate was on the basis of Government Resolution dated 10.3.2000.

11.7. Thus, in the considered opinion of this Court, both the issues raised by the State having already been addressed by learned Coordinate Benches as well as Hon'ble Division Bench of this Court, unless the said view of the learned Coordinate Bench or of the Division are modified, the same would be binding on this Court, more particularly since on factual scenario there is no difference between the employees in the cases before the learned Coordinate Bench as well as the Hon'ble Division Bench and the present petitioners and whereas the issue being raised by the petitioners is also absolutely identical to the issue decided. In view of the above, the decisions of the Hon'ble Supreme Court relied upon by the learned AGP would not advance the cause of the State.

11.8. At this stage, at the request of learned AGP, since it is pointed out that in some cases, the petitioners have already approached this Court at the time of their appointment, challenging their fixed term appointments, which petitions had not been entertained at the relevant point of time. It is submitted that such persons may have again approached this Court, seeking reliefs based upon the reliefs granted to similarly situated persons and whereas it is submitted that such persons would not be entitled to such reliefs, since the original order whereby this petition was rejected has become final between the parties. It is submitted that since the petitioners, who ought to have been aggrieved by the said order, have chosen not to challenge the same at the relevant point of time, therefore, the said decision would be binding on such petitioners. To allay such apprehension of any employee coming before this Court with a second round of petition, learned Advocates for the petitioners have inter alia supplied details of each of the petitioners, more particularly whereby the learned Advocates have specifically stated, under instructions, that the present petitions, which are being disposed of by this Court vide the present judgement is the first round of petitions preferred by the petitioners before this Court for the very cause of action. Since the present petitions involve deciding a group of petitions, that while the statements supplied by the learned Advocates are accepted and taken on record, yet at the same time, liberty is reserved in favour of the State or the concerned competent authorities to approach this Court for modification of this order, in case it is found at a later stage that any of the petitioners has already approached this



Court for the very selfsame reliefs and the same has already been rejected by this Court.”

5. Considering the law laid down by this Court in the above decision, since it is absolutely clear that the present petitioner is identically situated to the petitioners of Special Civil Application No.10738/2020 and allied matters, the same relief as having been granted in favour of the said petitioner deserves to be granted in favour of the present petitioner.

6. Hence, the respondents are directed to issue modified appointment order to the petitioner whereby the period from the date of appointment of the petitioner would be treated as on regular pay scale. The consequential benefits which the petitioner would be entitled to upon such placement including the benefit of arrears etc., shall be given to the petitioner w.e.f. 01.01.2020. The respondents shall complete the above exercise and disburse the arrears within a period of four months from the date of receipt of this order.

7. With the above observations and directions, the present petition stands disposed of as allowed. Rule is made absolute.

NIRU

(NIKHIL S. KARIEL,J)